APPENDIX

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STATE OF NEW YORK

COURT OF APPEALS

IN THE MATTER OF THE APPLICATION OF
BARBARA F. BERLIN,
Respondent-Appellant,

for the Custody of JONATHAN BERLIN and
RICHARD BERLIN,

VS.

JOSEPH G. BERLIN,
Appellant-Respondent.

KEATING, J.:

Joseph and Barbara Berlin were married on February 14, 1954 in the state of Maryland. They resided there as husband and wife until September 30, 1960 when a decree of divorce was entered by a Maryland Court. The divorce decree incorporated and confirmed a property and custody agreement made by the parties which awarded custody of the children of the marriage, Jonathan and Richard, to Barbara Berlin and granted visitation rights to Joseph.

The agreement provided that "the wife has the privilege of removing the children from this area." About six months after the decree was entered, Mrs. Berlin took the children, then 6 and 4 years of age respectively, to New York City where they have resided ever since.

Following the removal to New York, difficulties with regard to visitation rights of the father arose. Several

orders were granted, at the behest of Mr. Berlin, by the Maryland courts adjudging Mrs. Berlin to be in contempt of court for interfering with the father's visitation rights. On October 29, 1963, at the request of the father, the Maryland courts awarded custody of the children to him. The order awarding custody recited that a report had been filed by the Montgomery County Probation Department; that the mother had been adjudged in contempt of court and had failed to purge herself of the contempt; and that the best interest and welfare of the children would be served by awarding custody to the father.

Following the entry of this decree, the mother appeared in the Maryland proceeding and moved to vacate the decree on the grounds that (1) the Maryland courts lacked jurisdiction over the subject matter, (2) that she was denied due process for lack of notice of the proceedings resulting in the change of custody, and (3) that the lower court erred in changing the award of custody. All of these contentions were ultimately rejected by the Maryland Court of Appeals. The court noted, however, that "the mother is not foreclosed from reapplying for [the] custody [of the children]."

Following the Maryland determination, several hearings were held in New York Supreme Court on an application by Mrs. Berlin for custody of the children. The proceeding had been commenced prior to Mrs. Berlin's attempt to vacate the prior Maryland decree. The Supreme Court had issued a temporary order restraining Mr. Berlin from removing the children from this state pending its determination of the custody question.

At a hearing which was held on June 22, 1965, testimony was adduced, showing, among other things, that the children had lived all their lives with their mother, were now living and being cared for by their mother and their step-father, and that the only time the children had seen their father since December, 1962 was when he came to

New York, and with the aid of two private detectives, tried forcibly to remove the children from the state.

On September 22, 1966, some three years after the Maryland Courts had awarded custody to the father, Special Term awarded custody of the children to the mother, finding that the welfare and best interest of the children would be served thereby.

In addition, the Court ordered the father to pay $2,500 to the mother for her counsel fees and to pay the mother $60 a week for the children's support, such payments to start as of the date of the hearing in the New York Supreme Court; held that the father's right of visitation should be suspended until he demonstrated that he would not again try to remove the children forcibly from New York; and enjoined him from removing the children from the State.

The Appellate Division affirmed the award of custody and the order requiring the father to pay $60 a week for the support of the children, retroactive to the date of the hearing; gave the father some additional time to pay the arrears, reversed the order for payment of counsel fees; and reversed the award suspending the father's right to visitation and restored the rights he had under the original Maryland decree.

On this appeal the father argues that there is no proof in the record that the circumstances have so changed that the welfare of the children demands a change in the second custody decree and that in any event the Maryland decree is entitled to full faith and credit.

The arguments advanced by the appellant with regard to the award of custody to the mother are clearly without merit. Even if we were to assume—contrary to what we have already held (see *Matter of Bachman* v. *Meijas*, 1 N. Y. 2d 575)—that custody decrees are entitled to the same full faith and credit in this jurisdiction as in the

rendering jurisdiction, the award below would have to be sustained.

It is clear from the opinion of the Maryland Court of Appeals in the very case at bar that the award of custody to the father was subject to modification upon a showing that a change in custody would serve the best interests of the children. This was the basis upon which the second Maryland custody decree, awarding custody to the appellant, was made and it is the precise reason for the action taken by Special Term in the case at bar. We cannot say, upon reviewing the record, that this decision was not supported by the evidence or that, in the three years since the prior Maryland decree was made, the circumstances have not altered sufficiently to justify an examination of the custody question.

Viewing the evidence most favorable to the husband, we have here a situation where both parties are fit to rear the children, although they unfortunately have been unable to subordinate their own conflicts to the welfare of their children. The boys, however, have been in the continuous custody of their mother since the couple's divorce, almost 8 years. They have been attending school in New York and have no doubt established friendships here and adjusted to the difficulties which have been engendered by their parents' marital difficulties. It cannot be said that a change in custody (required by adherence to the prior Maryland custody decree) which could have a disruptive effect on the lives of these young children, is in their best interests. We conclude, therefore, that Special Term was justified in awarding custody to the mother.

There may be times when the courts of this state should be reluctant to exercise the power they have to modify an out of state decree (see e.g. *Matter of Lang* v. *Lang*, 9 A. D. 2d 401 affd. 7 N. Y. 2d 1029). This is especially so where the child is brought into this state for the purpose of avoiding a custody decree recently made by a sister state court. Thus it has been said:

> "It is especially desirable, from the point of view of the child's welfare, that such litigation as this should not be subject to endless repetition. If the matter has been competently litigated, decrees of foreign courts should be given recognition. If the foreign proceedings have taken place in the state where the child habitually lives, not necessarily where it is technically domiciled, it would seem desirable that other state courts decline to use their power merely because of the temporary presence of the child. Upon a change in the child's residence the decree at the former residence should be given full faith and credit, at least as to conditions existing at the time of its rendition, and the one asserting changed conditions should be compelled to show that they are such as to make him more, or another less, fit to have custody of the child." Stumberg, Conflict of Laws, p. 323, 3rd Ed. (1965).

In the case at bar, however, the Maryland order upon which the husband relies was entered some three years prior to the decree in question by a state court whose only significant contact with the children in question was that the parties had chosen to litigate the custody issue there. "A child is not a chattel" (*Matter of Bachman, supra*), however, and, in determining whether to refuse to exercise our discretion to modify a foreign decree such as this, the question should not be, as the appellant suggests, whether a parent is estopped by his participation in a foreign proceeding from relitigating the issue, but rather what, in fact, is in the best interest of the child. Moreover, as we noted earlier, even if *res judicata* effect were to be given to the Maryland decree, at least as to the facts found at the time, no one could seriously argue that, given the time which has elapsed since the prior decree was rendered, the age of these children and the fact that they

never had actually been out of their mother's custody, a New York court or, for that matter, a Maryland court should or would accept as binding the previous finding awarding custody to the father.

Several other issues are raised by Mr. Berlin's appeal as well as the cross-appeal. The first and most significant one relates to the visitation rights of the father and the manner in which they are to be exercised. Special Term's decision that the father's visitation rights be suspended until he demonstrates that he would not attempt to remove the children from this jurisdiction was reversed by the Appellate Division. The Court found that the only time the father had attempted to forcibly remove the children from this state was when he was acting pursuant to the Maryland custody order and that there was no basis for finding that he would now do so. The court, therefore, fixed the visitation rights as they had originally been agreed upon by the parties and incorporated into the divorce decree.

The cross-appellant argues that there are not sufficient safeguards to guarantee the return of the children to New York in the event the father refuses to return the children and again invokes the jurisdiction of the Maryland courts.

We agree with the Appellate Division that Special Term erred in suspending the father's visitation rights. On the other hand, we cannot agree with the court's conclusion that no protective measures are required to insure the return of the children to New York. The very Maryland order, pursuant to which he attempted once to forcibly remove the children from this jurisdiction, is still in effect and, given the bitter emotions which this controversy has evoked, we believe that the case should be remanded for consideration of proper conditions to the exercise of the visitation rights contained in the agreement. Among the conditions which should be considered is the posting of a prior Maryland decree and any other measure the court in its discretion deems necessary. We would note that the

suggested provisions urged by Mrs. Berlin, that the father's visits with the children be limited to New York and then only in the presence of a third party, seems to be unduly harsh and should be adopted only if no other provisions can be made to insure the father's compliance with the orders of the court.

We have examined the remaining arguments raised on the appeal and cross-appeal and find them to be without merit.

The order of the Appellate Division should be modified in accordance with the opinion herein and, as so modified, it should be affirmed with costs to the petitioner.

* * * * *

Order insofar as appealed from by the petitioner modified, with costs, and the matter remitted to Supreme Court, Queens County, for further proceedings in accordance with the opinion herein and, as so modified, affirmed. Order insofar as appealed from by the respondent affirmed. Opinion by Keating, J. All concur.

Original Remittitur of New York Court of Appeals

No. 461.

IN THE MATTER OF THE APPLICATION OF
BARBARA F. BERLIN,
Respondent-Appellant,

for the Custody of JONATHAN BERLIN and
RICHARD BERLIN,

vs.

JOSEPH G. BERLIN,
Appellant-Respondent.

BE IT REMEMBERED, That on the 4th day of October in the year of our Lord one thousand nine hundred and sixty-seven, Joseph G. Berlin, the appellant-respondent in this cause, came here unto the Court of Appeals, by Corner, Finn, Cuomo & Charles, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And Barbara F. Berlin, the respondent-appellant in said cause, afterwards appeared in said Court of Appeals by Brennan, London & Buttenwieser, her attorneys, and also filed a Notice of Appeal.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Wilfred R. Caron, of counsel for the appellant-respondent, and by Helen L. Buttenwieser, of counsel for the respondent-appellant, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court,

Original Remittitur of New York Court of Appeals

insofar as appealed from by the petitioner-respondent-appellant, be and the same hereby is modified, with costs, and the matter remitted to Supreme Court, Queens County, for further proceedings in accordance with the opinion herein and, as so modified, affirmed. Order, insofar as appealed from by the defendant-appellant-respondent, affirmed.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be modified and affirmed &c., as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,
Albany, December 29, 1967.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON,
Clerk.

State of New York Court of Appeals.

Order Denying Rehearing and Granting Amendment of Remittitur of New York Court of Appeals

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Tenth day of April A. D. 1968.

Present: HON. STANLEY H. FULD,
Chief Judge, presiding.

Mo. No. 357

IN THE MATTER OF THE APPLICATION OF
BARBARA F. BERLIN,
Respondent-Appellant,

for the Custody of JONTHAN BERLIN and
RICHARD BERLIN,

VS.

JOSEPH G. BERLIN,
Appellant-Respondent.

A motion for reargument and to clarify the opinion and to amend the remittitur in the above cause to this Court having heretofore been made upon the part of the appellant-respondent herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Order Denying Rehearing and Granting Amendment of Remittitur of New York Court of Appeals

ORDERED, that the said motion, insofar as it seeks re-argument and clarification of the opinion, be and the same hereby is denied, and it is

ORDERED, that the said motion, insofar as it seeks amendment of the remittitur, be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

> Upon the appeal herein there was presented and necessarily passed upon the following question under the Constitution of the United States, viz.: Appellant-respondent contended that the award of custody and support made to the respondent-appellant under the circumstances of this case contravened Article IV, Section 1, of the Constitution of the United States. The Court of Appeals held that Article IV, Section 1, of the Constitution of the United States was not violated.

AND the Supreme Court of Queens County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

RAYMOND J. CANNON,
Clerk.

Memorandum Decision of the Supreme Court, Appellate Division, Second Department

Order of the Supreme Court, Queens County, dated May 13, 1966, which decreed that, *nunc pro tunc* as of June 22, 1965, the petitioner was temporarily awarded custody of the two children, affirmed, without costs.

Judgment of said Court, dated September 23, 1966, modified on the law and the facts and in the exercise of discretion by: (1) striking out the second decretal paragraph, denying respondent rights of visitation, and by substituting therefor provisions fixing the respondent's rights of visitation of his children in accordance with the provisions therefor in the agreement, dated September 21, 1960, which was incorporated into the Maryland divorce decree, dated September 30, 1960; (2) striking out the third decretal paragraph, enjoining removal of the children from petitioner's custody or from this State; (3) amending the fourth decretal paragraph, as to support of the children, by directing payment of the arrears in two equal instalments; and (4) by striking out the fifth decretal paragraph, awarding a counsel fee. As so modified, judgment affirmed, without costs. The time for payment of the instalments of arrears is extended until 30 and 90 days, respectively, after entry of the order hereon.

The implied finding that the respondent would remove the children from this jurisdiction and would not return them to this jurisdiction if he were given rights of visitation of his children is reversed and a contrary finding is made.

The proceeding herein is one pursuant to article 4 of the CPLR, instituted by an order requiring appellant to show cause why a judgment should not be entered making the children wards of the court, awarding custody thereof to the petitioner, restraining their removal from this State and determining the appropriate conditions for the exercise of the appellant's rights of visitation.

Memorandum Decision of the Supreme Court, Appellate Division, Second Department

The parties resided in Maryland when a divorce action was instituted therein, although the petitioner moved to Washington, D. C. before the divorce decree was granted to her on September 30, 1960. *Inter alia,* an agreement between the parties dated September 21, 1960 and the divorce decree into which it was incorporated, awarded custody of the children to the petitioner, fixed specific rights of visitation, dependent on whether the children were living in or outside of the Washington area, awarded $100 a week for the support of the children, awarded $3500 to petitioner's attorneys as counsel fees and arrived at a property settlement, intended to settle all rights between the parties accruing out of the marriage, insofar as they might be settled by law.

Under Maryland law, a final property settlement between a husband and wife may be incorporated into a divorce decree. It will not be regarded as alimony and it may not be modified thereafter by the court (Schroeder v. Schroeder, 234 Md. 462; Grossman v. Grossman, 234 Md. 139). Under Maryland law, a wife has no right to obtain an award of a counsel fee after a final decree is entered (Tome v. Tome, 180 Md. 31; Berman v. Berman, 191 Md. 699).

The agreement, by providing for different rights of visitation, dependent on whether the children were residing in or outside the Washington area, authorized the petitioner to move from Washington with the children. She moved to New York with the children to rejoin her parents and the appellant moved to Washington, D. C. Bitter disputes arose between the parties as to appellant's visitation rights which the petitioner had denied him. Various orders were entered in the Maryland court which, *inter alia,* authorized appellant to suspend payments for the support of the children until petitioner purged herself of contempt in denying ap-

pellant's visitation rights. Only a few of said orders will be discussed.

By an order, dated July 30, 1963, the Maryland court awarded custody of the children to appellant unless the petitioner showed cause to the contrary on August 23, 1963. By an order, dated August 26, 1963, the Maryland court adjudged petitioner guilty of contempt, directed the sheriff to take and detain her until she purged herself of contempt and directed the Montgomery County Circuit Court Probation Department to make an investigation into the circumstances surrounding the requested change of custody.

By an order to show cause, dated September 25, 1963, returnable October 11, 1963, the petitioner instituted the instant proceeding in New York.

On October 29, 1963, after a report had been filed by the Montgomery County Probation Department of Maryland, which did not see or interview the petitioner or the children, and, in the absence of the petitioner, the Maryland court modified the final divorce decree by awarding the custody of the children to appellant and rescinding the provisions of the decree relative to the support and maintenance of the children, subject to the further order of the court. The decree was so modified because of the petitioner's interference with appellant's rights of visitation. On or about October 30th, 1963, appellant came to New York with a private detective to take custody of the children as authorized by the Maryland divorce decree, as modified on October 29, 1963, but he left this State without the children. On October 30, 1963, the petitioner obtained an *ex parte* order in the New York proceeding enjoining appellant from removing the children from the petitioner's custody or from this State, pending the hearing in the New York proceeding.

Memorandum Decision of the Supreme Court, Appellate Division, Second Department

The petitioner moved in the Maryland action to vacate the order of October 29, 1963, claiming in substance that neither the parties nor the infants resided in Maryland and that, therefore, the court lacked jurisdiction over the children. The motion was denied or dismissed on or about May 26, 1964. The petitioner appealed and, on May 26, 1965, the Court of Appeals of Maryland affirmed, pointing out that the petitioner was not foreclosed from seeking the right to visit the children or, when appropriate, reapplying for custody.

Then the instant proceeding pursuant to article 4 of the CPLR, which had been dormant, was revived. Appellant filed an answer alleging, *inter alia,* that the petitioner was prosecuting this proceeding for the purpose of having this court deny full faith and credit to the court of another State.

The proceeding resulted in a judgment which (1) awarded custody of the children to the petitioner, (2) decreed that appellant be denied rights of visitation until such time as he demonstrated that he was "willing to desist from his forcible attempts to remove the children from this jurisdiction and provide some plan embodying safeguards for petitioner in that regard", (3) decreed that all persons under the father's control be enjoined from removing the children from the petitioner's custody or from this State, (4) ordered appellant to pay $60 a week for the support of the two children, retroactive to June 22, 1965, with the arrears payable within 10 days after service of a copy of the judgment with notice of entry, and (5) ordered the respondent to pay $2500 to the petitioner for counsel fees.

In our opinion, when the relevant facts are considered, including the facts that the petitioner was authorized, by the agreement and the divorce decree, to move to New York

with the children, the appellant resided in Washington, D. C. at the time of the hearing in New York; both parties have remarried and both appear to be qualified to raise the children; the Montgomery County Circuit Court Probation Department of Maryland did not interview the petitioner or the children prior to the modification of the divorce decree, and the petitioner was deprived of custody of the children and of support of the children, not because she was an unfit mother but because she was in contempt of court for depriving appellant of his rights of visitation, it should not be held that Special Term lacked jurisdiction or improvidently exercised its discretion by coming to a determination in conflict with the determination of the Maryland courts (*cf.* Matter of Bachman v. Mejias, 1 N.Y. 2d 575).

In our opinion, Special Term did not commit reversible error in awarding custody of the children to the petitioner (*cf.* Matter of Bachman v. Mejias, *supra;* Matter of Strecker v. Strecker, 10 A.D. 2d 312; but see Eskin v. Eskin, 26 A.D. 2d 680). Since she resides in New York, she may be punished in New York for contempt of court if she violates rights of visitation. We think that the provisions depriving the respondent conditionally of his rights of visitation and enjoining the removal of the children from this State were not justified by the record. When the father came to New York on or about October 30, 1963, to remove the children from this State, he was armed with a decree of the Maryland Court giving him custody of the children, subject to the further order of the court. In our opinion, the implied finding that the father would remove the children unlawfully from this State or keep them unlawfully out of this State, if he were granted rights of visitation, is not supported by the proof and a contrary finding is made.

Memorandum Decision of the Supreme Court, Appellate Division, Second Department

Insofar as support and counsel fees are concerned, there is statutory authority for the award of support in this proceeding (Domestic Relations Law, § 240) and for an award of counsel fees (Domestic Relations Law, § 237, subd. 6; see Practice Commentaries under section 240 of McKinney's Domestic Relations Law, pp. 361-362, and under section 237 thereof, p. 293).

It is our view that, in the circumstances herein, Special Term did not improvidently exercise its discretion in awarding support although we are modifying said award to give the appellant some time to pay the arrears.

As to counsel fees, no request was made therefor until the conclusion of the oral proof, when petitioner's trial counsel said that she had not made any request therefor but would submit such a request. Apparently no request was submitted. In our opinion, the record does not justify such an award under the circumstances.

Brennan, Acting P. J., Hopkins, Benjamin, Munder and Nolan, JJ., concur.

Order of the Supreme Court, Appellate Division Second Department

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on July 10, 1967.

HON. ARTHUR D. BRENNAN,
Acting Presiding Justice,
HON. JAMES D. HOPKINS,
HON. A. DAVID BENJAMIN,
HON. FRED J. MUNDER,
HON. GERALD NOLAN,
Justices.

IN THE MATTER OF BARBARA F. BERLIN,
Petitioner-Respondent,

v.

JOSEPH G. BERLIN,
Appellant.

ORDER ON APPEAL FROM ORDER AND JUDGMENT

In the above entitled cause, the above named Joseph G. Berlin, a party, having appealed to this court from an order of the Supreme Court, Queens County, dated May 13, 1966, which decreed that *nunc pro tunc* as of June 22, 1965, the petitioner was temporarily awarded custody of the two children; and from a judgment of said court, dated September 23, 1966; the said appeal having been argued by Wilfred R. Caron, Esq., of counsel for the appellant, and by Helen L. Buttenweiser, Esq., of counsel for the respondent, and due deliberation having been had thereon;

Order of the Supreme Court, Appellate Division Second Department

and upon this court's decision slip heretofore filed and made a part hereof, it is:

ORDERED that the order appealed from is hereby unanimously affirmed, without costs; and it is further

ORDERED that the judgment appealed from is hereby modified on the law and the facts and in the exercise of discretion by: (1) striking out the second decretal paragraph, denying respondent rights of visitation, and by substituting therefor provisions fixing the respondent's rights of visitation of his children in accordance with the provisions therefor in the agreement, dated September 21, 1960, which was incorporated into the Maryand divorce decree, dated September 30, 1960; (2) striking out the third decretal paragraph, enjoining removal of the children from petitioner's custody or from this State; (3) amending the fourth decretal paragraph, as to support of the children, by directing payment of the arrears in two equal instalments; and (4) by striking out the fifth decretal paragraph, awarding a counsel fee; and, as so modified, said judgment is unanimously affirmed, without costs.

The time for payment of the instalments of arrears is extended until 30 and 90 days, respectively, after entry of this order; and it is further

ORDERED that the implied finding that the respondent would remove the children from this jurisdiction and would not return them to this jurisdiction if he were given rights of visitation of his children is hereby reversed and a contrary finding is made.

Enter:

HERMAN M. POGUL,
Clerk of the Appellate Division.

Opinion of Supreme Court, State of New York, County of Queens

PAUL BALSAM, J.:

This is an application by the petitioner-mother (1) for custody of Jonathan Berlin and Richard Berlin, the two infant issue of her prior marriage, (2) for a declaration that said infants are the wards of this court and (3) to restrain the respondent, her former husband, from removing said infants from the jurisdiction of this court.

Upon the hearings held herein and the facts presented thereat this court concludes that the best interests of the children would be served by awarding their custody to the petitioner.

Accordingly, the application is granted (*Matter of Bachman* v. *Mejias*, 1 N.Y.2d 575), custody of the two children is awarded to the petitioner and the respondent is directed to pay the sum of $60 per week support retroactive to the date of the original hearing held herein. The respondent is denied visitation rights until such time as he demonstrates to this court that he is willing to desist from his forcible attempts to remove the children from this jurisdiction and provide some plan embodying safeguards for the petitioner in that regard. Respondent may then apply to this court for a modification.

The respondent and all other persons including those acting under his direction and control, directly or indirectly, are enjoined from removing said children from petitioner's custody or from this State.

Petitioner is awarded counsel fees in the sum of $2500.

Settle judgment.

PAUL BALSAM,
J. S. C.

Judgment of the Supreme Court, State of New York, County of Queens

Present: HON. PAUL BALSAM,
Justice.

The issues in the above-entitled proceeding brought pursuant to Article 4 CPLR for the custody of the children herein, a declaration that said children are wards of the Court and an order restraining the removal of said children from this state, having duly come on to be heard before Mr. Justice Balsam without a jury at a Special Term, Part I, of this Court on the 22nd day of June, 1965, respondent herein having duly appeared by his attorneys, Greenwald, Kovner, Goldsmith & Berger, on that date, and a supplemental hearing having taken place on May 10, 1966, respondent herein having duly appeared on that date by Corner, Finn, Froeb & Charles, having been substituted as attorneys for respondent, and the petitioner having duly appeared on those dates by her attorneys, Brennan, London & Buttenweiser, and the proofs of both parties having been adduced and their respective counsel having been heard, and the Court after due deliberation on the 19th day of August, 1966 having duly made and filed a decision in writing and directing the settlement of judgment, it is

ORDERED AND ADJUDGED, that custody of the children herein be awarded to petitioner, and it is

FURTHER ORDERED AND ADJUDGED, that respondent be denied visitation rights until such time as he demonstrates to this Court that he is willing to desist from his forcible attempts to remove the children from this jurisdiction and provide some plan embodying safeguards for petitioner in that regard, and it is

FURTHER ORDERED AND ADJUDGED, that respondent and all other persons including those acting under his direction

and control, directly or indirectly, be enjoined from removing said children from petitioner's custody or from this state, and it is

FURTHER ORDERED AND ADJUDGED, that respondent pay to petitioner the sum of $60.00 a week for the support of the two children retroactive to June 22, 1965, and that said weekly payments are to be paid by check or money order at the residence of the petitioner or at such other place as she may designate in writing and that there is now due and owing to petitioner the sum of $3,840.00 which is due and payable within ten days after service of a copy of this judgment with notice of entry thereof, and it is

FURTHER ORDERED, that respondent pay to the petitioner as and for counsel fees the sum of $2,500.00 by check or money order at the office of her attorney within ten days after service of a copy of this judgment with notice of entry thereof.

Enter

/s/ PAUL BALSAM,
J. S. C.

Granted
Sep. 23, 1966
PAUL LIVOTI
Clerk

PAUL LIVOTI,
Clerk.

Interim Order of the Supreme Court of the State of New York, County of Queens

Present: HON. PAUL BALSAM,
Justice.

A proceeding having been commenced by Petitioner, through her attorneys, Brennan, London & Buttenwieser, by means of an Order to Show Cause dated September 25, 1963, why a judgment should not be made and entered making Jonathan Berlin and Richard Berlin Wards of the Court; awarding custody of Jonathan Berlin and Richard Berlin to their mother, Barbara F. Berlin; restraining the removal of the said Jonathan Berlin and Richard Berlin from the State of New York; and determining the appropriate conditions for the exercise of the visitation rights of respondent, and granting such other and further relief as the Court may deem just and proper; and respondent having appeared in this proceeding by his attorneys, Greenwald, Kovner, Goldsmith & Berger, and the matter having come on for hearing on June 22, 1965, and Greenwald, Kovner, Goldsmith & Berger having withdrawn as attorneys for respondent, and the firm of Corner, Finn, Froeb & Charles having been substituted as attorneys for respondent, and a hearing having been held on May 10, 1965 and certified copies of certain documents having been introduced,

Interim Order of the Supreme Court of the State of New York, County of Queens

Now, upon all the evidence adduced at the hearing, upon the motion of Brennan, London & Buttenwieser, it is hereby

ORDERED AND DECREED that nunc pro tunc, as of June 22, 1965, Barbara F. Berlin, now Mrs. Ernest Sands, is hereby temporarily awarded custody of the two children, Jonathan Berlin and Richard Berlin, who are the subject of this action.

Enter

/s/ PAUL BALSAM,
J. S. C.

Granted
May 16, 1966
PAUL LIVOTI
Clerk